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Supreme Court of the United States

OCTOBER TERM, 1948

No. 9

CHARLES KOVACS, APPELLANT,

vs.

ALBERT COOPER, JR., JUDGE OF THE FIRST DISTRICT POLICE COURT OF TRENTON

APPEAL FROM THE COURT OF ERRORS AND APPEALS OF THE STATE OF NEW JERSEY

FILED DECEMBER 30, 1947.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

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CHARLES KOVACS, APPELLANT,

vs.

ALBERT COOPER, JR., JUDGE OF THE FIRST DISTRICT POLICE COURT OF TRENTON

APPEAL FROM THE COURT OF ERRORS AND APPEALS OF THE STATE OF NEW JERSEY

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[fol. 1] **IN SUPREME COURT OF NEW JERSEY**

WRIT OF CERTIORARI

NEW JERSEY, ss.:

The State of New Jersey to Albert Cooper, Jr., Judge of the First District Police Court of Trenton: (Seal.)

We, being willing, for certain reasons to be certified of and concerning an accusation in writing, and the proceedings at the trial and judgment of conviction brought before Honorable Albert Cooper, Jr., Judge of the First District Police Court of Trenton, against Charles Kovacs, on the 23d day of August, 1946, for the violation of an Ordinance of the City of Trenton entitled "An Ordinance to Prohibit the Making of Unnecessary Noise," passed August 8, 1946, as is said, do command you that the said accusation in writing, proceedings at the trial, including the testimony taken and judgment of conviction and penalty, with all things touching and concerning the same, together with this writ, you distinctly and openly send, under your hand and seal, to our Justices of our Supreme Court of Judicature, at Trenton, on the first day of October, 1946, next, that our Justices may cause thereon to be done what of right and according to the laws and constitution of this State should be done.

Witness, Honorable Clarence E. Case, Chief Justice of our Supreme Court of Judicature at Trenton, this 9th day of September, 1946.

James J. Gavin, Clerk.

George Pellettieri, Attorney for Prosecutor.

ALLOCATUR

This writ is allowed. Let it be sealed.

A. Dayton Oliphant, J. S. C.

Sept. 9th, 1946.

[fol. 2] IN SUPREME COURT OF NEW JERSEY

CHARLES KOVACS, Prosecutor,

vs.

ALBERT COOPER, JR., JUDGE OF THE FIRST DISTRICT POLICE COURT OF TRENTON, Respondent.

On Certiorari

RETURN OF RECORD OF POLICE COURT—Filed September 26, 1946

I, Rudolph A. Socey, Clerk of the Police Court of the City of Trenton, do herewith send to the Supreme Court of the State of New Jersey, the complaint, conviction, sentence and all proceedings had before the Police Court of the City of Trenton, in the County of Mercer and State of New Jersey, wherein the Judge of the said Police Court tried and determined the complaint made and filed against the aforenamed Charles Kovacs of the charge of the violation of Section 4 of the ordinance of the City of Trenton entitled "An Ordinance to prohibit the making of unnecessary noise," together with all papers and things touching and concerning the same, as by the writ of certiorari sealed the 9th day of September, 1946, before the Honorable A. Dayton Oliphant, Justice of the Supreme Court, I am commanded to do.

I certify that I am the Clerk of the Police Court of the City of Trenton, and that the following are true copies of all papers, documents, etc., of the said Police Court of the City of Trenton, and that together they constitute the entire record of the proceedings in the above entitled action.

[fol. 3] Signed this 12th day of September, 1946, and sealed with the seal of the Police Court of the City of Trenton.

Rudolph A. Socey, Clerk of the Police Court of the City of Trenton.

ORDINANCE COMPLAINT

STATE OF NEW JERSEY,
County of Mercer, ss.:

On this 23rd of August, 1946, Patrl. V. Domanski, personally appeared before me the Police Justice of the City of Trenton, and upon his oath complains that at the City of Trenton, on August 22, 1946, Charles Kovacs did violate the 4th Section of an Ordinance of the City of Trenton, No. 430, entitled "An Ordinance to prohibit the making of unnecessary noise", in that he did, on South Stockton Street, in said City, play, use and operate a device known as a sound truck, (See Regulatory Ordinances of the City of Trenton, Section—). He therefore prays that the defendant may be apprehended and held to answer said complaint and be further dealt with as the law directs.

Ptl. V. Domanski, Complainant.

Sworn and subscribed to before me the day and year first above written. Rudolph A. Socey, Police Court Clerk.

Plea—Not Guilty. Date of Plea ——. Disposition $50.00. A. C. Jr.

[fol. 4] TRENTON POLICE COURT, NO. 1

Before: Albert Cooper, Jr., Police Justice of the City of Trenton, County of Mercer and State of New Jersey

PATRL. V. DOMANSKI, Prosecutor,

vs.

CHARLES KOVACS, Defendant

CONVICTION

STATE OF NEW JERSEY,
County of Mercer,
City of Trenton, ss.:

Be it remembered, that before me, the subscriber, the Police Justice of the City of Trenton, County of Mercer and State of New Jersey, on the 23rd day of August, 1946, A.D., personally appeared one Patrolman V. Domanski, of the First District Police, who made complaint in writing under

oath, that at the said City of Trenton, and within the jurisdiction of said Court, one Charles Kovacs did violate the 4th Section of an Ordinance of the City of Trenton, No. 430, entitled "An Ordinance to prohibit the making of unnecessary noise", in that he did, on South Stockton Street, in said City, play, use and operate a devise known as a sound truck and the said complaint having been first filed in my office, and said defendant having been brought before me on the 23rd day of August, 1946, A. D., in order that [fol. 5] he might make his defense against the said complaint; and the said complaint having been then and there read to him, and he being asked how he pleaded to said charge, through his counsel George Pellettieri, Esq. did demur, moving for a dismissal of the complaint on the ground that the ordinance upon which it was based was unconstitutional, giving his grounds and reasons therefor, which motion was denied, whereupon the attorney for said defendant entered a plea of Not Guilty to the offense aforesaid,

The offense being triable by law before said Police Court, of said City of Trenton, and the defendant having made application in writing, consenting and requesting to be tried before said Police Court immediately, waiving indictment and trial by jury for said offense.

The following named witnesses being sworn at said trial in open Court, testified on behalf of the State, as follows: Patrolman Domanski, who testified that he was on his post in the vicinity of Hanover and N. Stockton Streets, when he heard a sound truck broadcasting music. That he went in the direction of said sound and located said truck on the Stockton Street side of the Municipal Building. That as he approached said truck, the music stopped and he heard a man's voice broadcasting from said sound truck. That he thereupon went over to said truck, informing the occupants, the driver and Charles Kovacs, the defendant, that they were violating the sound ordinance of the City. That he then placed the defendant, Charles Kovacs, and the driver, Paul Nagy, under arrest. On behalf of the defendant, as follows: The defendant, Charles Kovacs, who admitted that he was the person who set the mechanism in said truck [fol. 6] playing music, and that he did speak into the sound mechanism set up in said truck on South Stockton Street.

Whereupon, I, the said Police Justice, having heard all the testimony offered on behalf of both the State and the

said Charles Kovacs, defendant, and upon considering said evidence and being satisfied of the guilt of the said defendant, I do convict him, the said Charles Kovacs, defendant, of the offense charged against him in said complaint, and I do, therefore, adjudge and order that the said defendant, for his said offense should pay a fine of fifty dollars.

In witness whereof, I, the said Albert Cooper, Jr., Police Justice, to this record of conviction have set my hand and affixed the seal of said Court, No. 1, at the City of Trenton aforesaid, this 12th day of September, 1946, A.D.

Albert Cooper, Jr., Police Justice. (Seal.)

Endorsed on back: Conviction. Dated ——, 19— A.D.

[fol. 7] ORDINANCE

AN ORDINANCE TO PROHIBIT THE MAKING OF UNNECESSARY NOISE

The Board of Commissioners of the City of Trenton, New Jersey, do ordain:

1. That it is hereby declared to be a nuisance and it shall be unlawful for any person, firm or corporation to make, cause or suffer or permit to be made or caused upon any premises owned, occupied or controlled by him or it, or upon any public street, alley or thoroughfare in the City of Trenton, any unnecessary noises or sounds by means of the human voice, or by any other means or methods which are physically annoying to persons, or which are so harsh, or so prolonged or unnatural, or unusual in their use, time and place as to occasion physical discomfort, or which are injurious to the lives, health, peace and comfort of the inhabitants of said city, or any number thereof.

2. That it shall be unlawful for any person, firm or corporation to play, use, operate or permit to be played, used or operated any radio receiving set, musical instrument, phonograph or other machine or device for the production or reproduction of sound with louder volume than is necessary for convenient hearing of the person so playing, using or operating such instrument or device and such persons who are voluntary listeners thereto, or in such manner as to disturb the peace, quiet and comfort of neighboring inhabitants. Nothing herein contained shall be construed to

prohibit playing by a band or orchestra in a hall, building or in the open air.

3. That it shall be unlawful for any person, firm or corporation for advertising purposes or for the purpose of attracting the attention of the passing public, to play, use, [fol. 8] operate, or permit to be played, used or operated any radio receiving set, musical instrument, phonograph, loud speaker, sound amplifier, or other machine or device for the producing or reproducing of sound on the streets or public places of the City of Trenton or in any place where the sound therefrom is cast directly upon the streets or public places, or which is so placed and operated that the sound therefrom can be heard to the annoyance or inconvenience of travelers upon any street or public place, or of persons in neighboring premises.

4. That it shall be unlawful for any person, firm or corporation, either as principal, agent or employee, to play, use or operate for advertising purposes, or for any other purpose whatsoever, on or upon the public streets, alleys or thoroughfares in the City of Trenton, any device known as a sound truck, loud speaker or sound amplifier, or radio or phonograph with a loud speaker or sound amplifier, or any other instrument known as a calliope or any instrument of any kind or character which emits therefrom loud and raucous noises and is attached to and upon any vehicle operated or standing upon said streets or public places aforementioned.

5. That it shall be unlawful for any person, firm or corporation to sound any horn or warning device on any automobile, motorcycle, bus or other vehicle, except when required by law, or when necessary to give timely warning of the approach of the vehicle or as a warning of impending danger to persons driving other vehicles or to persons upon the street. No person shall sound any horn or warning device on any automobile, motorcycle, bus or other vehicle which shall emit an unreasonably loud or harsh sound, or [fol. 9] for any unnecessary or unreasonable period of time.

6. That any person, firm or corporation who shall violate any of the provisions of this ordinance shall upon conviction thereof be punished by a fine of not to exceed two hundred ($200.00) dollars, or by imprisonment in the county jail for a period of not to exceed ninety (90) days, or by

both such fine and imprisonment, and each violation of any of the provisions of this ordinance, and each day the same is violated shall be deemed and taken to be a separate and distinct offense.

7. That all ordinances and parts of ordinances in conflict or inconsistent with this ordinance are hereby repealed, but only to the extent of such conflict or inconsistency, and this ordinance shall be in full force and effect immediately upon its adoption and its publication, as provided by law.

8. Should any section, paragraph, sentence, clause, or phrase of this ordinance be declared unconstitutional or invalid for any reason, the remainder of said ordinance shall not be affected thereby.

I hereby certify that this is a true copy.

Dated Trenton, N. J., September 6, 1946.

T. J. Burns, City Clerk, AG H.

[fol. 10] IN SUPREME COURT OF NEW JERSEY

[Title omitted]

REASONS—Filed September 18, 1946

The Prosecutor, Charles Kovacs, presents the following reasons for setting aside his conviction and sentence by Albert Cooper, Jr., Judge of the First District Police Court of Trenton, and brought before this Honorable Court by the Writ of Certiorari in the above case:

1. That the Ordinance of the City of Trenton entitled "An Ordinance to Prohibit the Making of Unnecessary Noise" passed August 8, 1946, was unconstitutional because it violates Article 1, Paragraph 1 of the New Jersey Constitution, in that, it deprives him of certain natural and unalienable rights which are those of enjoying and defending life and liberty, acquiring, possessing and protecting property and of pursuing and obtaining safety and habits.

2. That the Ordinance of the City of Trenton entitled "An Ordinance to Prohibit the Making of Unnecessary Noise" passed August 8, 1946, was unconstitutional because it violated Article 1, Paragraph 5 of the New Jersey Con-

stitution in that it deprived Deponent of his rights to free-[fol. 11] dom of speech and press and freedom to communicate information and opinions to others.

3. That the Ordinance of the City of Trenton entitled "An Ordinance to Prohibit the Making of Unnecessary Noise" passed August 8, 1946, is unconstitutional because it violated Article 1, Paragraph 18, in that it deprived Deponent of his rights to freedom of assembly.

4. That the Ordinance of the City of Trenton entitled "An Ordinance to Prohibit the Making of Unnecessary Noise" passed August 8, 1946, is unconstitutional because it violated Section 1 of the 14th Amendment of the United States Constitution in that it deprived Deponent of his rights of freedom of speech, freedom of assemblage and freedom to communicate information and opinions to others.

5. That the Ordinance of the City of Trenton entitled "An Ordinance to Prohibit the Making of Unnecessary Noise" passed August 8, 1946, is so obscure, vague and indefinite as to make it impossible of reasonable interpretation and, therefore, is unconstitutional as violative of Section 1, Article 1 of the Constitution of New Jersey.

6. The Ordinance of the City of Trenton entitled "An Ordinance to Prohibit the Making of Unnecessary Noise" passed August 8, 1946, is so obscure, vague and indefinite as to make it impossible of reasonable interpretation and, therefore, is unconstitutional as violative of the 14th Amendment of the Constitution of the United States.

7. The Ordinance of the City of Trenton entitled "An Ordinance to Prohibit the Making of Unnecessary Noise" [fol. 12] passed August 8, 1946, is unconstitutional in that it does not fix or establish any proper standard for the determination of what is and what is not necessary and unnecessary noises and sounds, and what is loud, raucous noises, and what is unnecessary or unreasonable periods of time, what is physically annoying to persons, what is harsh, prolonged or unnatural or unusual, what amounts to annoyance or inconvenience of persons but delegates the matters to be arbitrarily decided by individuals without prescribing any rules, basis or limitations to act as a guide in forming a judgment in violation of the 14th Amendment

to the Constitution of the United States guaranteeing due process of law.

8. The Ordinance of the City of Trenton entitled "An Ordinance to Prohibit the Making of Unnecessary Noise" passed August 8, 1946, is unconstitutional in that it does not fix or establish any proper standard for the determination of what is and what is not necessary and unnecessary noises and sounds and what is loud, raucous noises, and what is unnecessary or unreasonable periods of time, what is physically annoying to persons, what is harsh, prolonged or unnatural or unusual, what amounts to annoyance or inconvenience of persons but delegates the matters to be arbitrarily decided by individuals without prescribing any rules, basis or limitations to act as a guide in forming a judgment in violation of Section 1, Article 1 and Section 1, Article 4 of the New Jersey Constitution.

9. The said ordinance of the City of Trenton entitled "An Ordinance to Prohibit the Making of Unnecessary Noise" passed August 8, 1946, is unconstitutional in that it deprives deponent, under color of law, of the privileges [fol. 13] and immunities secured by the Constitution of the United States and the Constitution of the State of New Jersey and the right secured by the Laws of the United States and the Laws of New Jersey and of the rights of all persons within the jurisdiction of the United States and the State of New Jersey.

Prosecutor was illegally convicted under an Ordinance which is unconstitutional and, therefore, void.

George Pellettieri, Attorney for Prosecutor.

Served September 18, 1946.

[fol. 14] IN SUPREME COURT OF NEW JERSEY

[Title omitted]

NOTICE OF ARGUMENT—Filed September 25, 1946

SIR:

Take Notice of the argument of the issue joined in this cause, before the Supreme Court of New Jersey, to be held at the State House Annex, in the City of Trenton, State of New Jersey, on the first Tuesday of October, next,

at ten o'clock in the forenoon, or as soon thereafter as the Court can attend to the same.

Yours respectfully, George Pellettieri, Attorney for Prosecutor.

Dated: September 23, 1946.
To Louis Josephson, Attorney of Respondent.
Served September 24, 1946.

[fol. 15] In Supreme Court of New Jersey, Oct. Term, 1946

No. 258

Charles Kovacs, Prosecutor,

v.

Albert Cooper, Jr., Judge of the First District Police Court of Trenton, Respondent

Before Justices Bodine, Perskie and Wachenfeld

Opinion—Filed December 30, 1946

The opinion of the court was delivered by Wachenfeld, J.:

This writ of certiorari brings up for review prosecutor's conviction by the Police Court of the City of Trenton upon a complaint charging him with violating the fourth section of an ordinance of the City of Trenton entitled "An Ordinance to Prevent the Making of Unnecessary Noise."

The facts are undisputed that on August 22, 1946 prosecutor set an amplifier on a truck and while driven by another on South Stockton Street in the City of Trenton, first played music and then spoke through the sound amplifier. There is no testimony in the record to indicate the purpose or the subject of this speech, although prosecutor's brief states he was using the sound apparatus to comment on a labor dispute then in progress in Trenton. He was tried and convicted in the Trenton Police Court on the following day upon a complaint charging a violation of Section 4 of the aforesaid ordinance and fined $50 in accordance with Section 6 thereof.

[fol. 16] Section 4 of the ordinance reads as follows:

"That it shall be unlawful for any person, firm or corporation, either as principal, agent or employee, to play, use or operate for advertising purposes, or for any other purpose whatsoever, on or upon the public streets, alleys or thoroughfares in the City of Trenton, any device known as a sound truck, loud speaker or sound amplifier, or radio or phonograph with a loud speaker or sound amplifier, or any other instrument known as a calliope or any instrument of any kind or character which emits therefrom loud and raucous noises and is attached to and upon any vehicle operated or standing upon said streets or public places aforementioned."

Section 6 of the said ordinance, dealing with the penalty provisions, reads as follows:

"That any person, firm or corporation who shall violate any of the provisions of this ordinance shall, upon conviction thereof, be punished by a fine of not to exceed two hundred ($200) dollars, or by imprisonment in the County Jail for a period of not to exceed ninety (90) days, or by both such fine and imprisonment, and each violation of any of the provisions of this ordinance, and each day the same is violated, shall be deemed and taken to be a separate and distinct offense."

The sole question presented to this court by the prosecutor is the constitutionality of the ordinance. Two grounds on which it is attacked are, first, that it deprives the prosecutor of his rights to freedom of speech and freedom to communicate information and opinions to others and freedom of assembly in violation of Article 1, Paragraph 5, [fol. 17] and Article 1, Paragraph 18, of the New Jersey Constitution and Section 1 of the Fourteenth Amendment of the United States Constitution; second, that the provisions of the ordinance are so obscure, vague and indefinite as to make them impossible of reasonable interpretation and, therefore, unconstitutional as violative of Article 1, Section 1, of the Constitution of New Jersey and Section 1 of the Fourteenth Amendment of the Constitution of the United States.

The relevant provisions of the ordinance apply only to (1) vehicles (2) containing an instrument in the nature of a sound amplifier or any other instrument emitting loud and raucous noises and (3) such vehicle operated or standing upon the public streets, alleys or thoroughfares of the city. The problem raised is novel in this jurisdiction. The court in *Evening Times Printing and Publishing Company* v. *American Newspaper Guild, et al.*, 124 N. J. Eq. 71, raised but passed over the question of the legality *per se* of the use of sound trucks with broadcasting amplifiers. In that case, it should be noted, there was no municipal ordinance involved and the complainant only sought to enjoin misrepresentations and not all broadcasting through the amplifier.

The purpose of the legislation is clear. The conduct proscribed by this ordinance constitutes a potential nuisance. The attention of motorists is diverted from the efficient operation of their vehicles while that of pedestrians is almost involuntarily attracted to the source of the noise. Thus new traffic hazards are added to the ever-increasing dangers of city thoroughfares. Hence, the purpose of the ordinance is founded in reason.

The freedoms of expression and assembly of the prosecutor may have been prohibited in this respect, but the ordinance leaves untouched the right of the prosecutor [fol. 18] to express his views orally without the aid of an amplifier.

While the freedoms of speech and assembly are enunciated and preserved by the New Jersey and United States Constitutions, these freedoms are not absolute but may be curtailed under a reasonable exercise of the police power where the public health, safety and general welfare of the municipality demand.

In *Cox* v. *New Hampshire*, 312 U. S. 569, 61 Sup. Ct. 762, the United States Supreme Court considered the constitutionality of a state statute prohibiting a "parade or procession" upon a public street without a special license. In upholding the validity of the statute the court pointed out the position of civil liberties in organized society and said:

> "Civil liberties, as guaranteed by the Constitution, imply the existence of an organized society maintaining public order without which liberty itself would be

lost in the excesses of unrestrained abuses. The authority of a municipality to impose regulations in order to assure the safety and convenience of the people in the use of public highways has never been regarded as inconsistent with civil liberties but rather as one of the means of safeguarding the good order upon which they ultimately depend. The control of travel on the streets of cities is the most familiar illustration of this recognition of social need. Where a restriction of the use of highways in that relation is designed to promote the public convenience in the interest of all, it cannot be disregarded by the attempted exercise of some civil right which in other circumstances would be entitled to protection. One would not be justified in [fol. 19] ignoring the familiar red traffic light because he thought it his religious duty to disobey the municipal command or sought by that means to direct public attention to an announcement of his opinions. As regulation of the use of the streets for parades and processions is a traditional exercise of control by local government, the question in a particular case is whether that control is exerted so as not to deny or unwarrantedly abridge the right of assembly and the opportunities for the communication of thought and the discussion of public questions immemorially associated with resort to public places."

In Hague *v.* Congress of Industrial Organizations, 307 U. S. 496, 59 Sup. Ct. 954, while declaring unconstitutional an ordinance of the City of Jersey City which sought to license through the director of public safety meetings in the streets, parks and public places, the Supreme Court pointed out the same principal of ordered liberty in the following words:

"Wherever the title of streets and parks may rest, they have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens and discussing public questions. Such use of the streets and public places has, from ancient times, been a part of the privileges, immunities, rights and liberties of citizens.

"The privilege of a citizen of the United States to use the streets and parks for communication of views on

national questions may be regulated in the interest of all; it is not absolute, but relative, and must be exercised in subordination to the general comfort and con- [fol. 20] venience, and in consonance with peace and good order; but it must not in the guise of regulation be abridged or denied."

The freedom of speech and assembly to which the prosecutor is entitled are not restricted except to benefit the general welfare and in such a manner that the "opportunities for the communication of thought and the discussion of public questions" are not substantially curtailed. Such regulation cannot be deemed a violation of the constitutional guaranties to which the prosecutor is generally entitled.

The freedom to express one's opinions and to invite others to assemble to hear those opinions does not contain the right to compel others to listen. The means of expression through a sound amplifier is tantamount to compulsion. The booming voice of a speaker in crowded thoroughfares of the city forcibly attracts the attention of almost all within a wide area. That alleged right was never intended to be guaranteed by either Constitution.

While there are no decisions in this jurisdiction concerning anti-noise ordinances, there are others which indicate a municipality may exercise its police power for the benefit of the public health, safety and general welfare even though such exercise might result in the regulation of constitutional liberties and deprivation of certain rights. In *Atlantic City* v. *France*, 75 N. J. L. 910, this court held valid an ordinance prohibiting the emission from smokestacks of dense smoke containing soot in sufficient quantities to fall upon the surface of the city. Similarly, in *Schwarz Bros. Co.* v. *Board of Health*, 84 N. J. L. 735, an ordinance relating to the removal of dead animals from the public streets of Jersey City was held constitutional. An ordi- [fol. 21] nance regulating parking was upheld in *Welsh* v. *Morristown*, 98 N. J. L. 630. This State has unhesitatingly permitted the regulation of various types of business enterprises where required by the public welfare. *Falco* v. *Atlantic City*, 99 N. J. L. 19 (barber shop); *Wagman* v. *Trenton*, 102 N. J. L. 492 (public auctions); *Spiro Drug Service* v. *Union City*, 130 N. J. L. 1, aff'd 130 N. J. L. 496 (drug store); *Starkey* v. *Atlantic City*, 132 N. J. L. 27 (drug

store); *Amodio* v. *West New York*, 133 N. J. L. 220 (barber shop).

Other jurisdictions have approved anti-noise ordinances. *Brachey v. Maupin*, 277 Ky. 467, 126 S. W. (2d) 881; *Maupin* v. *Louisville, et al.*, 284 Ky. 195, 144 S. W. (2d) 237; *Hamilton* v. *Montrose*, 109 Colo. 228, 124 P. (2d) 757.

There is no merit to the contention that the ordinance is so obscure, vague and indefinite as to violate Section 1, Article 1, of the New Jersey Constitution and the Fourteenth Amendment of the Federal Constitution.

Only Section 4 of the ordinance, upon which the prosecutor was convicted, is relevant. In simple, unambiguous language it prohibits the use upon the public streets of any device known as a sound truck, loud speaker or sound amplifier. This is the only charge made against the defendant in the complaint. The phraseology of the statute should leave no doubt in the mind of anyone of common intelligence as to what is forbidden.

Its provisions are not unreasonable or oppressive but, on the contrary, are logical and advisable and its enforcement will give to the public at least a modicum of peace and quiet to which it is entitled.

Judgment affirmed with costs.

Mr. Justice Perskie dissents.

[fol. 22] In Supreme Court of New Jersey

Charles Kovacs, Prosecutor-Appellant,

vs.

Albert Cooper, Jr., Judge of the First District Police Court of Trenton, Defendant-Respondent

On Certiorari from Police Court of the City of Trenton

Affirmance and Remittitur—Filed January 13, 1947

This cause having been brought to a hearing on a writ of certiorari from the Trenton Police Court at the October term, 1946, of this Court, and the Court having heard George Pellettieri, Esquire, of Counsel with the Prosecutor, and Louis Josephson, Esquire, of Counsel with the Respondent, and having duly considered the questions brought up by this writ;

It is, on this 13th day of January, 1947, on motion of Louis Josephson, Esquire, of Counsel with the Respondent, ordered, adjudged and decreed that the judgment of conviction of the Trenton Police Court made on the 23rd of August, 1946, from which the Prosecutor appealed, by virtue of said writ, be and the same is hereby affirmed, and that the writ of certiorari heretofore allowed in this cause be and the same is hereby dismissed with costs;

It being further ordered that the record in this cause be remitted to the Trenton Police Court for further proceedings thereon according to the law and practice of that Court.

On Motion of Louis Josephson, Counsel for Respondent.

[fol. 23] IN SUPREME COURT OF NEW JERSEY

[Title omitted]

NOTICE OF APPEAL AND GROUNDS—Filed January 14, 1947

To: Louis Josephson, Esquire and John A. Brieger, Esquire, Attorneys for Respondent:

SIRS:

Take notice that the prosecutor, Charles Kovacs, appeals to the Court of Errors and Appeals in the Last Resort in all Causes from the whole of judgment entered in the Supreme Court in this cause on the following grounds:

The Supreme Court erred in affirming the judgment of conviction of the defendant, Charles Kovacs, entered in the First District Police Court of the City of Trenton.

George Pellettieri, Attorney for and of Counsel with Prosecutor.

Served January 14, 1947.

[fols. 24-25] IN NEW JERSEY COURT OF ERRORS AND APPEALS

CHARLES KOVACS, Prosecutor-Appellant,

vs.

ALBERT COOPER, JR., Judge of the First District, Police Court of Trenton, Defendant-Respondent

On Appeal from the Supreme Court

NOTICE OF ARGUMENT—Filed January 15, 1947

To: Louis Josephson, Esquire and John A. Brieger, Attorneys for Respondent:

SIRS:

Please take notice, that we shall move the argument of the above entitled cause before the New Jersey Court of Errors and Appeals at the Court Room of said court, in the State House Annex Building, in the City of Trenton, New Jersey, on Tuesday, February 4, 1947, at 10 o'clock in the forenoon, or as soon thereafter as counsel can be heard.

Yours, etc., George Pellettieri, Attorney for and of Counsel with Prosecutor-Appellant.

Dated: January 6, 1947.

Served January 14, 1947.

[fol. 26] IN NEW JERSEY COURT OF ERRORS AND APPEALS, FEBRUARY TERM, 1947

No. 27

CHARLES KOVACS, Prosecutor-Appellant,

vs.

ALBERT COOPER, JR., Judge of the First District Police Court of Trenton, Defendant-Respondent

Submitted February Term, 1947.

On Appeal from New Jersey Supreme Court.

For Prosecutor-Appellant, George Pellettieri, of Trenton.

For Defendant-Respondent, Louis Josephson and John A. Brieger, both of Trenton.

The judgment of the Supreme Court was affirmed by reason of an evenly divided vote (6-6) of the Court of Errors and Appeals.

OPINION—Filed April 24, 1947

The following opinion sets forth the writer's reasons for a reversal of the Supreme Court judgment:

EASTWOOD, J.:

Prosecutor-Appellant was convicted in the Police Court of the City of Trenton for a violation of the fourth section of an Ordinance of the City of Trenton, entitled "An Ordinance to Prevent the Making of Unnecessary Noise." On certiorari, the judgment of conviction was affirmed.

The factual minutiae reveal that prosecutor-appellant, on August 22, 1946, placed what is commonly known as an amplifier on a sound truck driven by another on South Stockton Street in the City of Trenton, and employed the device both for playing music and speaking through the sound amplifier. Although the record is barren as to the purpose or subject matter of prosecutor-appellant's discourse, it is stated in the brief filed on his behalf that his comments were made in relation to a labor dispute then in [fol. 27] progress in Trenton. On August 23, 1946, prosecutor was tried and convicted by defendant-respondent, sitting as Judge of the Trenton Police Court, who imposed a fine of $50. upon prosecutor-appellant under the provisions of Section 6 of the Ordinance in question.

The question presented for judicial determination is the constitutionality of the Ordinance. It is claimed by prosecutor-appellant that the challenged Ordinance deprives him of various unalienable rights, among which are freedom of speech and freedom to communicate information and opinions to others, and freedom of assembly guaranteed to him by Article 1, Paragraph 5, and Article 1, Paragraph 18, of the New Jersey Constitution, and Section 1 of the Fourteenth Amendment of the United States Constitution; also that the provisions of the Ordinance are obscure, vague and indefinite in that they are impossible of reasonable interpretation, and, therefore, in violation of Article 1, Section 1, of the New Jersey Constitution, and Section 1

of the Fourteenth Amendment of the United States Constitution. In defense of the Ordinance it is maintained that the municipality had full and ample authority to enact the challenged legislation in its lawful exercise of its inherent Police Power; and further, that the provisions of the Ordinance are not obscure, vague and indefinite; and that, therefore, the ordinance in question is constitutional and the conviction of prosecutor-appellant thereunder was proper.

That portion of the Ordinance under attack provides as follows:

"4. That it shall be unlawful for any person, firm or corporation, either as principal, agent or employee, to play, use or operate for advertising purposes, or for any other purpose whatsoever, on or upon the public streets, alleys or thoroughfares in the City of Trenton, any device known as a sound truck, loud speaker or sound amplifier, or radio or phonograph with a loud speaker or sound amplifier, or any other instrument known as a calliope or any instrument of any kind or character which emits therefrom loud and raucous noises and is attached to and upon any vehicle operated or standing upon said street or public places aforementioned."

[fol. 28] That freedom of speech and the right freely to communicate one's information and opinions to others, and the right freely to assemble, are guaranteed to the individual under the Constitutions of this State and of the United States, are principles so well established as to admit of no dispute. Likewise the authority of a municipality to employ its inherent police powers to the end that good government, order and the protection of persons and property and for the preservation of public health, safety and welfare of its inhabitants, in exercise of such powers is a principle that is not open to challenge. It is thus apparent that individual privileges under the constitutional guarantees and the police powers of the municipality for the protection of the public welfare, are relative rights, not to be arbitrarily asserted nor unqualifiedly insisted upon. Both must be so construed so as to effect a nicety of balance to the end that the rights of the individual and those of the public at large may be brought into harmonious rapprochement. The right or privilege of free speech or publication, guaranteed by the constitutions of the United States and of the several states, has its limitation. The right is not an

absolute one and although limitations upon such rights may not be made except in exceptional cases, the constitutional prohibition against freedom of speech was not intended to give immunity for every use or abuse of language. Near v. Minnesota, 283 U. S. 697, 75 L. ed. 1357, 51 S. Ct. 625; Gitlow v. New York, 268 U. S. 652, 69 L. ed. 1138, 45 S. Ct. 625. The right of freedom of speech is guaranteed by the provision of our constitutions both state and federal, and it has ever been the effort of the government and the courts to uphold and maintain it under proper and reasonable restriction. State v. Klapprott; et al., 127 N. J. L. 395, 22 A. 2d 877. The foregoing authorities are representative of a host of decisions affirming those unalienable rights constitution-[fol. 29] ally guaranteed to the individual. On the other hand, it has been held time and time again, by authorities of equal weight and importance, that municipalities may enact regulations in the interest of the public safety, health, welfare and convenience so long as these regulations do not abridge the individual liberties secured by the State and Federal Constitutions. Schneider v. State of New Jersey, 308 U. S. 147, 84 L. Ed. 155, 60 S. Ct. 146; Hague v. Congress of Industrial Organizations, 307 U. S. 496; Cantwell v. Connecticut, 310 U. S. 296.

The right of a municipality to enact ordinances in furtherance of its inherent police powers finds statutory expression in the provisions of R. S. 40:48-2, which provides as follows:

"Any municipality may make, amend, repeal and enforce such other ordinances, regulations, rules and by-laws not contrary to the laws of this state or of the United States, as it may deem necessary and proper for the good government, order and protection of persons and property, and for the preservation of the public health, safety and welfare of the municipality and its inhabitants, and as may be necessary to carry into effect the powers and duties conferred and imposed by this subtitle, or by any law." Specifically, under the general heading of ordinances, the governing body of every municipality may make, amend, repeal and enforce ordinances to:

"Auctions and noises. 8. Regulate the ringing of bells and the crying of goods and other commodities for sale at auction or otherwise, and to prevent disturbing noises;" R.S. 40:48-1.

Addressing our attention to the language of the challenged Ordinance, it is clear that its effect is to outlaw and prohibit in toto any use of "any device known as a sound truck, loud speaker or sound-amplifier, * * * on or upon the public streets, alleys or thoroughfares in the City of Trenton, * * *". It prohibits such use "for advertising purposes, or for any other purpose whatsoever, * * *". [fol. 30] The decision below was grounded on the reasoning that the purpose of the legislation in question was to proscribe by the Ordinance a potential nuisance. (See Kovacs v. Cooper, Judge, 135 N. J. L. 64, 50 A. 2d 451.) That holding we conclude was erroneous. It is difficult to conceive, and we do not perceive in what manner and by what means the use of a sound truck or an amplifying device thereon, when properly regulated and confined as to the time, area and extent of its use, is, per se, a nuisance. Conceivably an unlimited and unrestricted use of such device might result in the creation of a nuisance, but when reasonably limited and restricted might well be considered as a proper and permissible mode and means of conveying information and opinions beneficial to the public at large. It appears to us, and we so hold, that the primary aim of Section 4 of the Ordinance, under review, is to prohibit "loud and raucous noises", at all times and in all places in the City of Trenton, emanating from sound trucks, loud speakers, sound amplifiers, radios or phonographs, equipped with loud speakers or sound amplifiers, or other similar instruments. It is thus clear that Section 4 of the Ordinance is not regulatory within a proper exercise of the police power of the municipality. As stated in Hague v. Congress of Industrial Organizations, supra, "The privilege of a citizen of the United States to use the streets and parks for communication of views on national questions may be regulated in the interest of all; it is not absolute, but relative, and must be exercised in subordination to the general comfort and convenience, and in consonance with peace and good order; but it must not in the guise of regulation be abridged or denied." Section 4 of the challenged Ordinance seeks to impose precisely the type of municipal regulation condemned in Hague v. Congress of Industrial Organizations. Section 4 is thus constitutionally repugnant. As such, it cannot stand.

[fol. 31] So far as we are able to ascertain, the precise question before us has not been judicially determined in

this State. The case of Atlantic City v. France, 75 N. J. L. 910, 70A. 163 (upholding an ordinance prohibiting the emission of dense smoke from smoke stacks); Schwarz Bros. Co. v. Board of Health of Jersey City, 84 N. J. L. 735, 87 A. 463 (relating to the removal of dead animals from public streets); Welsh v. Morristown, 98 N. J. L. 630, 121 A. 697 (regulating parking); Falco v. Atlantic City, 99 N. J. L. 19, 122 A. 610 (barber shop); Wagman v. Trenton, 102 N. J. L. 492, 134 A. 115 (public auctions); Spiro Drug Service, Inc. v. Board of Com'rs of Union City, 130 N. J. L. 1, 30 A. 2d 892, aff'd., 130 N. J. L. 496, 33 A. 2d 872 (drug store); Starkey v. Atlantic City, 132 N. J. L. 27, 38 A. 2d 198 (drug store); Amodio v. Board of Com'rs of Town of West New York, 133 N. J. L. 220, 43 A. 2d 889 (barber shop); advanced by defendant-respondent in support of the challenged Ordinance, all involved the proper exercise of the police power of the municipality by means of reasonable regulation and restriction. The foregoing cases are illustrations of a valid exercise of the police power. They are not authority for the unlimited, unrestricted and prohibitory use of the police power as set forth in Section 4 of the Ordinance under review.

We conclude that Section 4 of the Ordinance under attack represents an attempt by the municipality under the guise of regulation, to prohibit and outlaw, under all circumstances and conditions, the use of sound amplifying systems. It follows that this portion of the ordinance is in collision and at variance with the principles relating to and governing a valid exercise of municipal police powers. As such, it cannot be sustained. It is then the duty and province of the Court to declare it invalid. N. J. Good Humor, Inc. v. Board of Com'rs of Borough of Bradley Beach, 124 N. J. L. 162, 11 A. 2d 113, Opinion by Mr. Justice Heher; First Church of Christ, Scientist, Newark, New Jersey v. Board of Adjustment of City of Newark, 128 N. J. L. 376, 26 A. 2d [fol. 32] 246, Opinion by Chancellor Campbell; O'Mealia Outdoor Advertising Co. v. Mayor and Council of the Borough of Rutherford, 128 N. J. L. 587, 27 A. 2d 863, Opinion by Mr. Justice Donges; Phillips v. Borough of East Paterson, 134 N. J. L. 161, 46 A. 2d 667, Opinion by Mr. Justice Bodine., Meyer v. Nebraska, 262 U. S. 390, 67 L. ed. 1042, 43 S. Ct. 625, 29 A. L. R. 1446; Jones v. Portland, 245 U. S. 217, 62 L. ed. 252, 38 S. Ct. 112, L. R. A. 1918C, 765, Ann. Cas. 1918E, 660; Dobbins v. Los Angeles, 195 U. S.

223, 49 L. ed. 169, 25 S. Ct. 18; Mugler v. Kansas, 123 U. S. 623, 31 L. ed. 205, 8 S. Ct. 273.

The judgment below is reversed.

Justice Heher and Judges Wells and Freund concur in the foregoing opinion.

[File endorsement omitted.]

[fol. 33] In New Jersey Court of Errors and Appeals

No. 27. February Term, 1947

Charles Kovacs, Prosecutor-Appellant,

vs.

Albert Cooper, Jr., Judge of the First District Police Court of Trenton, Defendant-Respondent

Memorandum—Filed April 24, 1947

Colie, J.:

I am of the opinion that the judgment under review should be reversed but I do not agree that Section 4 of the ordinance is an unconstitutional exercise of the police power. The privilege of a citizen to use the streets for the communication of ideas is not absolute but must be exercised in subordination to the general comfort and convenience. Most assuredly the prohibition against making "loud and raucous" noises is a reasonable regulation.

Appellant was found guilty of a violation of Section 4 of "An Ordinance to prohibit the making of unnecessary noise." Section 4 reads:

"That it shall be unlawful for any person, firm or corporation, either as principal, agent or employee, to play, use or operate for advertising purposes, or for any other purpose whatsoever, on or upon the public streets, alleys or thoroughfares in the City of Trenton, any device known as a sound truck, loud speaker or sound amplifier, or radio or phonograph with a loud speaker or sound amplifier, or any other instrument known as a calliope or any instrument of any kind or character which emits therefrom loud and raucous noises and is attached to and upon any vehicle

operated or standing upon said streets or public places aforementioned."

The prohibition is against the emitting of "loud and raucous" noises and applies equally to each of the enumerated categories, i.e. sound truck, loud speaker, sound amplifier, radio or phonograph with loud speaker or sound amplifier, calliope or any other instrument.

[fol. 34] The only evidence before the trial court was that a patrolman heard a sound truck broadcasting music and heard a man's voice broadcasting from the sound truck. There is not a scintilla of evidence that the music or voice was loud or raucous, and under the wording of Section 4 such proof is an essential prerequisite to a finding of guilt of a violation.

[fol. 34a] [File endorsement omitted.]

[fols. 35-36] In New Jersey Court of Errors and Appeals

No. 27. February Term, 1947

Charles Kovacs, Appellant,

vs.

Albert Cooper, Jr., Judge, &c., Respondent

Argued Feb. 6, 1947. Decided Apr. 24, 1947

On appeal from the Supreme Court, whose opinion is reported in 135 N. J. L. 65.

The judges being equally divided on the question whether the judgment should be reversed, the judgment is affirmed solely because of such division, which renders any opinion by the court impossible.

For the appellant, George Pellettieri.

For the respondent, Louis Josephson and John A. Brieger.

Per Curiam:

The judgment herein is affirmed by an equally divided court.

"Endorsed. Filed—April 24, 1947. Lloyd B. Marsh, Clerk."

[fol. 37] In New Jersey Court of Errors and Appeals

February Term, 1947

On Appeal from Supreme Court

Charles Kovacs, Prosecutor-Appellant,

vs.

Albert Cooper, Jr., Judge of the First District Police Court of Trenton, Defendant-Respondent

Judgment of Affirmance and Remittitur—Filed December 9, 1947

This cause having been duly argued at the February Term, 1947, of this Court by George Pellettieri, Esquire, of Counsel for the appellant and Louis Josephson, Esquire, of Counsel for the respondent, and the court having considered the same, and the judges being equally divided on whether the judgment should be reversed;

It is thereupon, on this 9th day of December, in the year of our Lord one thousand and nine hundred and forty-seven, ordered and adjudged that the judgment of the Supreme Court, removed by the appeal in this cause, be affirmed; and that the record be remitted to the Supreme Court to be proceeded with in accordance with this judgment and the practice of said court.

On motion of

Louis Josephson, Attorney for Defendant-Respondent.

A True Copy: Lloyd B. Marsh, Clerk.

[fol. 37a] [File endorsement omitted.]

[fol. 38] In New Jersey Court of Errors and Appeals

[Title omitted]

Petition for Appeal—Filed December 11, 1947

Considering himself aggrieved by the final judgment of the New Jersey Court of Errors and Appeals entered on the 9th day of December, 1947, in the above-entitled cause, the appellant herein, Charles Kovacs, hereby prays that an appeal be allowed to the Supreme Court of the United

States herein, and for an Order allowing same and fixing the amount of the bond thereon.

STATEMENT

This case is one in which the validity of state legislation is drawn in question, to wit, Ordinance No. 430 of the City of Trenton, New Jersey, passed August 8, 1946, and the Fourth Section of said Ordinance, reading as follows:

"An ordinance to prohibit the making of unnecessary noise.

"The board of commissioners of the city of Trenton, New Jersey, do ordain:

"1. That it is hereby declared to be a nuisance and it shall be unlawful for any person, firm or corporation to make, cause or suffer or permit to be made or caused [fol. 39] upon any premises owned, occupied or controlled by him or it, or upon any public street, alley or thoroughfare in the City of Trenton, any unnecessary noises or sounds by means of the human voice, or by any other means or methods which are physically annoying to persons, or which are so harsh, or so prolonged or unnatural, or unusual in their use, time and place as to occasion physical discomfort, or which are injurious to the lives, health, peace and comfort of the inhabitants of said city, or any number thereof.

"2. That it shall be unlawful for any person, firm or corporation to play, use, operate or permit to be played, used or operated any radio receiving set, musical instrument, phonograph or other machine or device for the production or reproduction of sound with louder volume than is necessary for convenient hearing of the person so playing, using or operating such instrument or device and such persons who are voluntary [fol. 40] listeners thereto, or in such manner as to disturb the peace, quiet and comfort of neighboring inhabitants. Nothing herein contained shall be construed to prohibit playing by a band or orchestra in a hall, building or in the open air.

"3. That it shall be unlawful for any person, firm or corporation for advertising purposes or for the purpose of attracting the attention of the passing public, to play, use, operate, or permit to be played, used or operated any radio receiving set, musical in-

strument, phonograph, loud speaker, sound amplifier, or other machine or device for the producing or reproducing of sound on the streets or public places of the City of Trenton or in any place where the sound therefrom is cast directly upon the streets or public places, or which is so placed and operated that the sound therefrom can be heard to the annoyance or inconvenience of travelers upon any street or public place, or of persons in neighboring premises.

[fol. 41] "4. That it shall be unlawful for any person, firm or corporation, either as principal, agent or employee, to play, use or operate for advertising purposes, or for any other purpose whatsoever, on or upon the public streets, alleys or thoroughfares in the City of Trenton, any device known as a sound truck, loud speaker or sound amplifier, or radio or phonograph with a loud speaker or sound amplifier, or any other instrument known as a calliope or any instrument of any kind or character which emits therefrom loud and raucous noises and is attached to and upon any vehicle operated or standing upon said streets or public places aforementioned.

"5. That it shall be unlawful for any person, firm or corporation to sound any horn or warning device on any automobile, motocycle, bus or other vehicle, except when required by law, or when necessary to give timely warning of the approach of the vehicle or as a warning of impending danger to persons driving other vehicles or to persons upon the street. No person shall sound any horn or warning device on any automobile, motorcycle, bus or other vehicle which [fol. 42] shall emit an unreasonably loud or harsh sound, or for any unnecessary or unreasonable period of time.

"6. That any person, firm or corporation who shall violate any of the provisions of this ordinance shall upon conviction thereof be punished by a fine of not to exceed two hundred ($200.00) dollars, or by imprisonment in the county jail for a period of not to exceed ninety (90) days, or by both such fine and imprisonment, and each violation of any of the provisions of this ordinance, and each day the same is

violated shall be deemed and taken to be a separate and distinct offense.

"7. That all ordinances and parts of ordinances in conflict or inconsistent with this ordinance are hereby repealed, but only to the extent of such conflict or inconsistency, and this ordinance shall be in full force and effect immediately upon its adoption and its publication, as provided by law.

"8. Should any section, paragraph, sentence, clause, or phrase of this ordinance be declared unconstitu-[fol. 43] tional or invalid for any reason, the remainder of said ordinance shall not be affected thereby.

"I hereby certify that this is a true copy.

"Dated Trenton, N. J., September 6, 1946.

T. J. Burns, City Clerk."

Said Ordinance was in force and effect at the time of the offense alleged in the complaint. It is drawn in question upon the ground that it is repugnant to the 14th Amendment to the United States Constitution.

Therefore in accordance with the rules of the Supreme Court of the United States (Rule 46, paragraph 2) and 28 U. S. C. secs. 344 and 354, and Section 237 (a) of the Judicial Code, the petitioner respectfully shows this court that the case is one in which, under the legislation in force when the Act of January 31, 1928 (45 Stat. L. 54) was passed, to wit, under Section 237 (a) of the Judicial Code (28 U. S. C. sec. 344), a review could be had in the Supreme Court of the United States on a writ of error as a matter of right.

Assignments of Error

Now comes the appellant in the above cause and files herewith, together with his petition for appeal, these assignments of error and says that they are errors committed by the courts below in the record and proceedings of the above-entitled cause, and for the purpose of having the same reviewed in the United States Supreme Court says that the New Jersey Court of Errors and Appeals erred in [fol. 44] affirming the judgment of the New Jersey Supreme Court affirming the judgment of conviction entered against

appellant by the First District Police Court of the City of Trenton because

1. The provisions of the Ordinance deprive appellant of his rights to freedom of speech, freedom of press, freedom to communicate information and opinions to others and freedom of assembly contrary to Section 1 of the 14th Amendment to the United States Constitution and are therefore unconstitutional.

2. The provisions of the Ordinance are beyond the police power of the City of Trenton and are prohibitory and not regulatory.

3. As it has been construed and applied by the courts below to abridge and deny appellant's constitutionally guaranteed rights of freedom of speech, of press, of assembly, and to communicate information and opinions to others, the Ordinance is presumptively unconstitutional, and which presumption the appellee has failed to overcome by a showing that the Ordinance is a reasonable and necessary means to prevent a clear, present and substantial danger to the public peace and order, or right of a state to protect the welfare of its inhabitants, and is constitutional.

4. The provisions of the Ordinance are so obscure, vague and indefinite as to make them impossible of reasonable interpretation and, therefore, unconstitutional as violative of the 14th Amendment to the Constitution of the United States.

5. The provisions of the Ordinance are unconstitutional in that they do not fix or establish any proper standard for the determination of what is and what is not necessary and unnecessary noises and sounds, and what is loud, raucous noises and what is unnecessary or unreasonable periods of time, what is physically annoying to persons, what is harsh, prolonged or unnatural or unusual, what [fol. 45] amounts to annoyance or inconvenience of persons, but delegates the matters to be arbitrarily decided by individuals without prescribing any rules, basis or limitations to act as a guide in forming a judgment, in violation of the 14th Amendment to the Federal Constitution guaranteeing due process and equal protection of law.

PRAYER FOR REVERSAL

For an on account of the above errors, the appellant, Charles Kovacs, prays that the said judgments of the First District Police Court of the City of Trenton, the Supreme Court of New Jersey and the New Jersey Court of Errors and Appeals, hereinbefore described in the above-entitled cause be reviewed by the Supreme Court of the United States and reversed, and a judgment rendered in favor of appellant and for his costs.

George Pellettieri, 1 West State Street, Trenton 8, New Jersey, Attorney for Appellant.

[fols. 45a-47] [File endorsement omitted.]

[fols. 48-49] Citation in usual form showing service on Louis Josephson, et al., filed Dec. 11, 1947, omitted in printing.

[fol. 50] IN NEW JERSEY COURT OF ERRORS AND APPEALS

[Title omitted]

ORDER ALLOWING APPEAL—Filed December 11, 1947

Appellant, Charles Kovacs, in the above-entitled cause has prayed for the allowance of an appeal in this cause to the Supreme Court of the United States from the judgment rendered by the New Jersey Court of Errors and Appeals on December 9, 1947, affirming the judgment of the New Jersey Supreme Court which affirmed the judgment of the First District Police Court of Trenton convicting appellant of a violation of an Ordinance of the City of Trenton.

It appearing that appellant, in his motions and arguments of counsel made in his behalf in this cause, attacked the Ordinance in question on the grounds, as contended by him, that it was void and unconstitutional and violative of the fundamental freedoms guaranteed and secured by the 14th Amendment to the Constitution of the United States, all of which contentions were overruled; and

It appearing that appellant on June 20, 1947, presented and filed his Petition for Appeal to the Supreme Court of the United States, a Statement, Assignments of Error and

Prayer for Reversal and Statement as to Jurisdiction, all within three months from the date said judgment of the New Jersey Court of Errors and Appeals became final, and it further appearing that the said New Jersey Court of Errors and Appeals is the court of last resort in New [fol. 51] Jersey in which a decision can be had in this cause, pursuant to the statutes and the rules of the Supreme Court of the United States in such case made and provided,

It Is on this 11th day of December, 1947, Ordered that an appeal be and the same is hereby allowed to the Supreme Court of the United States from the judgment of the New Jersey Court of Errors and Appeals in the aforesaid cause as provided by law, and

It Is Further Ordered that the Clerk of the New Jersey Court of Errors and Appeals shall prepare and certify a transcript of the record, proceedings and judgment in said cause, together with all exhibits in their original form and the judgment rendered by the New Jersey Court of Errors and Appeals in connection with the proceedings in this cause, and transmit the same to the Clerk of the Supreme Court of the United States so that he shall have the same in said Court within twenty (20) days from this date, and

It Is Further Ordered that a bond on appeal for appearance and costs on appeal be fixed in the sum of Five Hundred ($500.00) Dollars and appellant having presented an undertaking conditioned as required by law in the sum of Five Hundred ($500.00) Dollars executed by good and sufficient sureties, it is further ordered that such undertaking or bond be and the same is hereby approved and ordered filed.

It Is Further Ordered that the issuance of mandate or execution be stayed pending a final disposition of this appeal and until the return of the mandate from the Supreme Court of the United States.

Done at Trenton, New Jersey, on this 11th day of December, 1947.

A. Dayton Oliphant, Chancellor and Presiding Judge of the New Jersey Court of Errors and Appeals.

[fol. 51a] [File endorsement omitted.]

[fol. 52] In New Jersey Court of Errors and Appeals

[Title omitted]

Order Recalling Remittitur—Filed December 11, 1947

A Remittitur having been entered on the 9th day of December, 1947, remanding the record in this cause to the New Jersey Supreme Court, and an appeal from the judgment of the New Jersey Court of Errors and Appeals having been taken by the appellant to the Supreme Court of the United States:

It is on this 11th day of December, 1947, Ordered that the said Remittitur dated the 9th day of December, 1947, be and hereby is recalled for the purpose of enabling the Clerk of this Court to certify the record and proceedings in this cause to the Clerk of the Supreme Court of the United States.

A. Dayton Oliphant, Chancellor and Presiding Judge of the New Jersey Court of Errors and Appeals.

[fols. 52a-54] [File endorsement omitted.]

[fol. 55] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 56] In Supreme Court of the United States

Statement of Points Relied On—Filed December 30, 1947

Comes now appellant, Charles Kovacs, in the above-entitled cause and states that the points upon which he intends to rely in the Supreme Court of the United States in this cause are as follows:

1. The provisions of the Ordinance deprive appellant of his rights to freedom of speech, freedom of press, freedom to communicate information and opinions to others and freedom of assembly contrary to Section 1 of the 14th Amendment to the United States Constitution and are therefore unconstitutional.

2. The provisions of the Ordinance are beyond the police power of the City of Trenton and are prohibitory and not regulatory.

3. As it has been construed and applied by the courts below to abridge and deny appellant's constitutionally guaranteed rights of freedom of speech, of press, of assembly, and to communicate information and opinions to others, the Ordinance is presumptively unconstitutional, and which presumption the appellee has failed to overcome by a showing that the Ordinance is a reasonable and necessary means to prevent a clear, present and substantial danger to the public peace and order, or right of a state to protect the welfare of its inhabitants, and is constitutional.

[fol. 57] 4. The provisions of the Ordinance are so obscure, vague and indefinite as to make them impossible of reasonable interpretation and, therefore, unconstitutional as violative of the 14th Amendment to the Constitution of the United States.

5. The provisions of the Ordinance are unconstitutional in that they do not fix or establish any proper standard for the determination of what is and what is not necessary and unnecessary noises and sounds, and what is loud, raucous noises and what is unnecessary or unreasonable periods of time, what is physically annoying to persons, what is harsh, prolonged or unnatural or unusual, what amounts to annoyance or inconvenience of persons, but delegates the matters to be arbitrarily decided by individuals without prescribing any rules, basis or limitations to act as a guide in forming a judgment in violation of the 14th Amendment to the Federal Constitution guaranteeing due process and equal protection of law.

For the above reasons the judgment of the New Jersey Court of Errors and Appeals should be reversed.

George Pellettieri, 1 West State Street, Trenton 8, N. J., Attorney for Appellant.

[fol. 57a] [File endorsement omitted.]

[fol. 58] SUPREME COURT OF THE UNITED STATES

DESIGNATION OF PARTS OF RECORD TO BE PRINTED—Filed January 8, 1948

To the Clerk of the Supreme Court of the United States:

Comes now the appellant in the above-entitled cause and states that only the following parts of the record, as filed in this Court, need be printed by the Clerk for the hearing of the case:

1. Judgment of Affirmance and Remittitur returned by the New Jersey Court of Errors and Appeals to the New Jersey Supreme Court.

2. Order Recalling Remittitur entered by the New Jersey Court of Errors and Appeals.

3. State of the Case on Appeal to the New Jersey Court of Errors and Appeals.

4. Opinion of New Jersey Supreme Court.

5. Pur Curiam Opinion of New Jersey Court of Errors and Appeals.

6. Opinion of Mr. Justice Howard Eastwood of New Jersey Court of Errors and Appeals.

7. Memorandum of Mr. Justice Frederic R. Colie of New Jersey Court of Errors and Appeals.

[fol. 59] 8. Petition for Allowance of Appeal to the Supreme Court of the United States, Statement, Assignments of Error and Prayer for Reversal.

9. Citation.

10. Order Allowing Appeal to the Supreme Court of the United States.

11. Statement of Points to be Relied Upon.

12. Order Noting Probable Jurisdiction on Appeal.

Dated at Trenton, New Jersey, January 5, 1948.

George Pellettieri, Counsel for Appellant; 1 West State Street, Trenton 8, N. J.

[fol. 60] Proof of Service by Acknowledgment

On behalf of appellee, Albert Cooper, Jr., Judge of the First District Police Court of Trenton in the above-mentioned cause, service is hereby acknowledged of a copy of the Designation of Parts of Record to be printed.

Received at Trenton, New Jersey, on this 6th day of January, nineteen hundred and forty-eight.

Louis Josephson.

John A. Brieger, Counsel and Attorney of Record for Appellee; Albert Cooper, Jr., Judge of the First District Police Court of Trenton.

[fol. 60a] [File endorsement omitted.]

[fol. 61] Supreme Court of the United States

Order Noting Probable Jurisdiction—Filed June 21, 1948

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

Endorsed on Cover: File No. 52,735. New Jersey, Court of Errors and Appeals, Term No. 9. Charles Kovacs, Appellant, vs. Albert Cooper, Jr., Judge of the First District Police Court of Trenton. Filed December 30, 1947. Term No. 9 O. T. 1948.